

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

LORINDA REICHERT,

Plaintiff,

No. C 11-03592 WHA

v.

TIME INC., ADMINISTRATIVE
COMMITTEE OF THE TIME WARNER
PENSION PLAN, and FMR LLC,

**CASE MANAGEMENT ORDER
AND REFERENCE TO ADR
UNIT FOR MEDIATION**

Defendants.

After a case management conference, the Court enters the following order pursuant to Rule 16 of the Federal Rules of Civil Procedure ("FRCP") and Civil Local Rule 16-10:

1. All initial disclosures under FRCP 26 must be completed by **NOVEMBER 30, 2011**, on pain of preclusion under FRCP 37(c), including full and faithful compliance with FRCP 26(a)(1)(A)(iii).
2. Leave to add any new parties or pleading amendments must be filed by **MARCH 8, 2012**.
3. The non-expert discovery cut-off date shall be **JUNE 30, 2012**.
4. The last date for designation of expert testimony and disclosure of full expert reports under FRCP 26(a)(2) as to any issue on which a party has the burden of proof ("opening reports") shall be **JUNE 30, 2012**. Within **FOURTEEN CALENDAR DAYS** of said deadline, all other parties must disclose any expert reports on the same issue

1 (“opposition reports”). Within **SEVEN CALENDAR DAYS** thereafter, the party with
2 the burden of proof must disclose any reply reports rebutting specific material in
3 opposition reports. Reply reports must be limited to true rebuttal and should be very
4 brief. They should not add new material that should have been placed in the opening
5 report and the reply material will ordinarily be reserved for the rebuttal or sur-rebuttal
6 phase of the trial. If the party with the burden of proof neglects to make a timely
7 disclosure, the other side, if it wishes to put in expert evidence on the same issue
8 anyway, must disclose its expert report within the fourteen-day period. In that event, the
9 party with the burden of proof on the issue may then file a reply expert report within the
10 seven-day period, subject to possible exclusion for “sandbagging” and, at all events, any
11 such reply material may be presented at trial only after, if at all, the other side actually
12 presents expert testimony to which the reply is responsive. The cutoff for all expert
13 discovery shall be **FOURTEEN CALENDAR DAYS** after the deadline for reply reports.
14 In aid of preparing an opposition or reply report, a responding party may depose the
15 adverse expert sufficiently before the deadline for the opposition or reply report so as to
16 use the testimony in preparing the response. Experts must make themselves readily
17 available for such depositions. Alternatively, the responding party can elect to depose
18 the expert later in the expert-discovery period. An expert, however, may be deposed
19 only once unless the expert is used for different opening and/or opposition reports, in
20 which case the expert may be deposed independently on the subject matter of each
21 report. At least **28 CALENDAR DAYS** before the due date for opening reports, each party
22 shall serve a list of issues on which it will offer any expert testimony in its case-in-chief
23 (including from non-retained experts). This is so that all parties will be timely able to
24 obtain counter-experts on the listed issues and to facilitate the timely completeness of all
25 expert reports. Failure to so disclose may result in preclusion.

- 26 5. As to damages studies, the cut-off date for *past damages* will be as of the expert report
27 (or such earlier date as the expert may select). In addition, the experts may try to project
28 *future damages* (i.e., after the cut-off date) if the substantive standards for future

- 1 damages can be met. With timely leave of Court or by written stipulation, the experts
2 may update their reports (with supplemental reports) to a date closer to the time of trial.
- 3 6. At trial, the direct testimony of experts will be limited to the matters disclosed in their
4 reports. Omitted material may not ordinarily be added on direct examination.
5 This means the reports must be complete and sufficiently detailed.
6 Illustrative animations, diagrams, charts and models may be used on direct examination
7 only if they were part of the expert's report, with the exception of simple drawings and
8 tabulations that plainly illustrate what is already in the report, which can be drawn by
9 the witness at trial or otherwise shown to the jury. If cross-examination fairly opens the
10 door, however, an expert may go beyond the written report on cross-examination and/or
11 redirect examination. By written stipulation, of course, all sides may relax these
12 requirements. For trial, an expert must learn and testify to the full amount of billing and
13 unbilled time by him or his firm on the engagement.
- 14 7. To head off a recurring problem, experts lacking percipient knowledge should avoid
15 vouching for the credibility of witnesses, *i.e.*, whose version of the facts in dispute is
16 correct. This means that they may not, for example, testify that based upon a review of
17 fact depositions and other material supplied by counsel, a police officer did (or did not)
18 violate standards. Rather, the expert should be asked for his or her opinion based —
19 explicitly — upon an assumed fact scenario. This will make clear that the witness is not
20 attempting to make credibility and fact findings and thereby to invade the province of
21 the jury. Of course, a qualified expert can testify to relevant customs, usages, practices,
22 recognized standards of conduct, and other specialized matters beyond the ken of a lay
23 jury. This subject is addressed further in the trial guidelines referenced in paragraph 15
24 below.
- 25 8. A large-scale criminal trial before the undersigned judge commenced on October 24,
26 2011, and is expected to go through the beginning of 2012. Because this trial will
27 consume an unusual amount of time and resources, motions in civil cases will be
28 considered and heard only on a selective basis. Except for discovery disputes, no

1 motions may be filed in this action without prior written approval. A party seeking
2 approval to file a motion must file a précis that summarizes the essence of the motion
3 and explains its urgency. Any party opposing approval to file based on the précis may
4 file an opposition by noon on the second business day following the day on which the
5 précis was filed. Both the précis and the opposition must be five pages or less,
6 double-spaced, and may not contain footnotes or attachments. After considering the
7 précis and the opposition (if any), the Court will either grant or deny leave to file the
8 motion. If leave is granted, a briefing schedule and hearing date will be set. Discovery
9 disputes will continue to be heard in the manner described at paragraph 25 of the
10 supplemental order to the order setting the initial case management conference.

11 9. The last date to file dispositive motions shall be **AUGUST 2, 2012**. No dispositive
12 motions shall be heard more than 35 days *after* this deadline, *i.e.*, if any party waits until
13 the last day to file, then the parties must adhere to the 35-day track in order to avoid
14 pressure on the trial date.

15 10. The **FINAL PRETRIAL CONFERENCE** shall be at **2:00 P.M. on SEPTEMBER 10, 2012**.
16 Although the Court encourages argument and participation by younger attorneys, lead
17 trial counsel must attend the final pretrial conference. For the form of submissions for
18 the final pretrial conference and trial, please see paragraph 15 below.

19 11. A **BENCH TRIAL** shall begin on **SEPTEMBER 17, 2012**, at **7:30 A.M.**, in Courtroom 9,
20 19th Floor, 450 Golden Gate Avenue, San Francisco, California, 94102. The trial
21 schedule and time limits shall be set at the final pretrial conference. Although almost all
22 trials proceed on the date scheduled, it may be necessary on occasion for a case to trail,
23 meaning the trial may commence a few days or even a few weeks after the date stated
24 above, due to calendar congestion and the need to give priority to criminal trials.
25 Counsel and the parties should plan accordingly, including advising witnesses.

26 12. Counsel may not stipulate around the foregoing dates without Court approval.

27 13. While the Court encourages the parties to engage in settlement discussions, please do
28 not ask for any extensions on the ground of settlement discussions or on the ground that

1 the parties experienced delays in scheduling settlement conferences, mediation or ENE.
2 The parties should proceed to prepare their cases for trial. No continuance (even if
3 stipulated) shall be granted on the ground of incomplete preparation without competent
4 and detailed declarations setting forth good cause.

- 5 14. To avoid any misunderstanding with respect to the final pretrial conference and trial, the
6 Court wishes to emphasize that all filings and appearances must be made — on pain of
7 dismissal, default or other sanction — unless and until a dismissal fully resolving the
8 case is received. It will not be enough to inform the clerk that a settlement in principle
9 has been reached or to lodge a partially executed settlement agreement or to lodge a
10 fully executed agreement (or dismissal) that resolves less than the entire case.

11 Where, however, a fully-executed settlement agreement clearly and fully disposing of
12 the entire case is lodged reasonably in advance of the pretrial conference or trial and
13 only a ministerial act remains, the Court will arrange a telephone conference to work out
14 an alternate procedure pending a formal dismissal.


- 15 15. If you have not already done so, please read and follow the “Supplemental Order to
16 Order Setting Initial Case Management Conference in Civil Cases Before Judge William
17 Alsup” and other orders issued by the Clerk’s office when this action was commenced.
18 Among other things, the supplemental order explains when submissions are to go to the
19 Clerk’s Office (the general rule) versus when submissions may go directly to chambers
20 (rarely). With respect to the final pretrial conference and trial, please read and follow
21 the “Guidelines For Trial and Final Pretrial Conference in Civil Bench Cases Before The
22 Honorable William Alsup.” All orders and guidelines referenced in the paragraph are
23 available on the district court’s website at <http://www.cand.uscourts.gov>. The website
24 also includes other guidelines for attorney’s fees motions and the necessary form of
25 attorney time records for cases before Judge Alsup. If you do not have access to the
26 Internet, you may contact Deputy Clerk Dawn K. Toland at (415) 522-2020 to learn how
27 to pick up a hard copy.
28

1 16. All pretrial disclosures under FRCP 26(a)(3) and objections required by FRCP 26(a)(3)
2 must be made on the schedule established by said rule.

3 17. This matter is hereby **REFERRED** to the **ADR UNIT** for **MEDIATION**.

4
5 **IT IS SO ORDERED.**

6
7 Dated: November 18, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE